IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 978 of 2001
with
LETTERS PATENT APPEAL NOS.989 to 1007 of 2001, 456/03, 600/03, 108/01, 979/01, 980/01, 981/01, 982/01, 984/01 to 988 of 2001
with
CIVIL APPLICATIONS No. 12358/01, 12355/01, 9841/00, 12362/01, 9855/00, 9842/00, 12356/01, 9847/00, 12326/01, 12324/01, 9834/00, 9852/00, 12331/01, 9833/00, 12325/01, 9836/00, 12349/01, 12328/01, 9830/00, 12330/01, 9856/00, 9857/00, 12319/01, 9854/00, 12346/01, 9835/00, 12318/01, 9848/00, 12368/01, 9844/00, 12345/01, 9843/00, 12393/01, 9846/00, 12320/01, 9840/00, 12327/01, 12338/01, 9850/00, 12363/01, 12360/01, 9838/00, 12367/01, 9845/00, 9837/00, 12350/01, 9853/00, 12322/01, 1202/02.

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA sd/-
and
HON'BLE MR.JUSTICE M.C.PATEL sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

SANKALCHAND P VACHHETA SINCE DECEASED THROUGH HIS HEIRS.

Appearance:

1. LETTERS PATENT APPEAL No. 978 of 2001 & allied matters

MR SN SHELAT, ADVOCATE GENERAL WITH MR.PR

ABICHANDANI, AGP, for Appellant No.
MR SB VAKIL for MR DC DAVE for Respondent No. 1
SERVED BY AFFIX.-(R) for Respondent No. 1/1-1/5

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 29/07/2004

C.A.V. COMMON JUDGEMENT
(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

1. All these matters are disposed of by this common Judgment and order, as common point is involved in all these matters. All these Appeals are arising out of the Judgments and orders passed by K.R.Vyas, J. in Special Civil Applications and Miscellaneous Civil Applications, filed in Special Civil Applications.

2. Learned Advocate General Shri Shelat appearing with learned A.G.P. Shri PR Abichandani for the Appellants submitted that the Appellant - State of Gujarat and Competent Authority and the Deputy Collector (ULC) were required to file all these Appeals against the orders passed by the learned Single Judge in writ petitions whereby the learned Single Judge of this Court disposed of all the writ petitions on the point of possession. He submitted that due to the connivance of the officials of the Government and the AGPs, who appeared in the writ petitions, with the original petitioners the Government has suffered loss running into crores of rupees as it has lost thousands of Acres of valuable lands worth crores of rupees which were already vested in the Government and the possession thereof was already taken over since long. Learned Advocate General also stated at the Bar that because of dereliction of duty the Government had also issued Notices to the concerned AGPs and, thereafter, they were sacked as AGPs.

In view of the above serious allegations we have heard learned Advocate General Shri Shelat and other learned Counsel for the respondents to a great length. On the point of maintainability of the present LPA all these Appeals were seriously opposed by learned Senior Advocate Shri S.B.Vakil and all other Counsel, appearing for the respondents. It may also be stated that in some of the matters the learned Counsel Mrs.K.A.Mehta,

Mr.A.J.Patel and others appearing for the respondents conceded that Appeals before this Court against the Judgments and orders passed by the learned Single Judge, were maintainable as their petitions were mainly under Article 226 of the Constitution of India. It may also be stated that all the learned Counsel for the respondents original petitioners also submitted that if this Court comes to the conclusion that the LPAs were maintainable then without expressing any opinion on merits, the matters be straightaway sent back to any other Single Judge for deciding the writ petitions afresh, strictly in accordance with law, on merits.

3. Learned Senior Advocate, Mr.Vakil and others had argued the point of maintainability of Appeals to a great length. In nut-shell we would like to reproduce the contentions of the ld. advocates on the maintainability all these Appeals, which are as under :-

(i) That no LPA would be maintainable against the orders passed by the learned Single Judge in writ petitions which were filed under Article 227 of the Constitution.

(ii) That the learned single Judge has not decided the writ petition on merits and determined the rights of the parties, therefore, it cannot be said that the orders passed in all the petitions were Judgments. Hence, the Appeals under clause : 15 of the LPA would not lie against such orders.

(iii) That there was no judicial determination of any dispute between the parties as the learned Single Judge has simply given effect to the provisions of the Repeal Act of 1999 on the statement that the Government had not taken possession of an excess vacant land.

(iv) That it was more or less a consent order, therefore, no Appeals would lie against such consent orders.

(v) That no LPA would lie against an order passed by the learned Single Judge dismissing the review petitions, filed in main writ petition.

4. Before appreciating the aforesaid contentions raised by learned Counsel for the respondents - original petitioners, we would like to narrate few facts of, at least, one petition from the present group of matters, which are very essential for correct adjudication, therefore, facts of LPA No.978 of 2001 are narrated in

nutshell, which are as under :

By an order dated 14.3.1988 the Competent Authority and Deputy Collector, Urban Land Ceiling, Ahmedabad, declared 9421 sq.mtrs. of land of the original land owner Shri Gabhaji Otaji and ordered to vest it in the Government. The said excess land was in possession of Shakalji Punjaji who claimed to have purchased the same under the registered Sale Deed dated 15.7.1960. Aggrieved by the order dated 22.2.1988, passed by the Competent Authority and Deputy Collector, Urban Land Ceiling, Ahmedabad, said Shri Shankalchand Punjaji had filed Appeal No.141 of 1991 before the Urban Land Tribunal at Ahmedabad (for short "Tribunal"), which was dismissed by the learned Tribunal on 27.4.1992, by holding that ".....the evidence on record that the possession of the suit land has been taken over by the State Government u/s.10 of the Act on 27.7.1990 and, therefore, the disputed land has been vested in the State Government free from all encumbrances ..... in other words the State Government has become the owner in respect of the suit land." The respondent - original petitioner Shri Shakalchand B. Vachheta died, therefore, his LRs challenged the impugned orders dated 14.3.1988 passed by the competent Authority and the Deputy Collector, Urban Land Ceiling, Ahmedabad, confirmed in Appeal on 27.4.1992 by the learned Tribunal by way of Special Civil Application No.539 of 1993 before this Court. The cause title of the petition shows that the petition was filed only under Article 226 of the Constitution. On the point of possession of the land a specific averments made by the original petitioners in Para : 5 of Special Civil Application No.539 of 1993 that "The Tribunal has also confirmed the order of the competent Authority and also ordered to initiate proceeding u/s.10 of the Land Ceiling Act for compensation and the possession of the land has been taken over by the State Government....."

The above petition of the respondents original petitioners were admitted and pending before this Court since long and during the pendency and final disposal of the said petition the Urban Land (Ceiling & Regulation) Repeal Act, 1999 (Act No.15 of 1999) (for short "Repeal Act, 1999) came to be passed by the State Government repealing the main Urban Land (Ceiling & Regulation) Act of 1976 (for short "the Act") on 30.3.1999. Though, the Repeal Act was passed on 30.3.1999, Special Civil Application No.539 of 1993 was moved before K.R.Vyas, J. just on the eve of summer vacation i.e. on 12.5.1999 and the said petition was disposed of on 12.5.1999. It is a

brief order which we would like to reproduce, which is as under:

> "The petitioner in this petition has challenged the order passed by the authorities under the Urban Land (Ceiling & Regulation) Act, 1976. The authorities have not taken the possession of the land in question from the petitioner, which is not in dispute.
>
> In view of the fact that the dispute involved in this petition is directly covered under the provisions of the urban Land (Ceiling & Regulation) Repeal Act, 1999 (Act No.15 of 1999) repealing the Urban Land (Ceiling & Regulations) Act, 1976, which is also adopted by the State Govt. by passing a resolution dated 30.3.1999, this petition has abated and consequently the impugned order passed against the petitioner also stands abated. Rule made absolute accordingly with no order as to costs."

5. We have already reproduced the specific findings recorded by the learned Tribunal on the point of possession of the suit land which was taken over by the State Government u/s.10 of the Act way back on 22.7.1990 and that vesting of the excess land in the State Government free from all encumbrances and the averments made by the respondents - petitioners themselves in Para : 5 of Special Civil Application No.539 of 1993 that the possession of the land had already been taken over by the State Government. Inspite of all this the learned Single Judge in his order dated 12.5.1999, passed in Special Civil Application No.539 of 1993, stated that ..."the Authority have not taken possession of the land from the petitioner which is not in dispute." (emphasis supplied). Accordingly, the learned Single Judge dismissed the petition as having been abated and also held that consequently the impugned orders passed against the petitioners also stands abated and thereby made Rule absolute. Be that as it may.

6. Coming to know about the aforesaid order dated 12.5.1999, passed by K.R.Vyas, J. in Special Civil Application No.539 of 1993, the State of Gujarat and competent Authority and Deputy Collector (ULC), Ahmedabad, filed Review Application being Miscellaneous Civil Application No.1503 of 1999 seeking review of an order dated 12.5.1999 mainly on the ground that the possession of the land was already taken over by the State Government way back in 1990, but some-how or the

other the said fact was not brought to the notice of the learned Single Judge and neither the Officers from the concerned Department were called nor the original record was placed before the Court for its perusal. Along with the Application, Panchnama dated 27.7.1990, taking over possession of the excess vacant land was also produced at Annexure : B to the Review Application. It was also contended in the Review Application that reading Section 4 of the Repeal Act with Section 3(1)(A) of the Act all the proceedings which were finally concluded prior to commencement of Repeal Act i.e. 30.3.1999 will not get abated, therefore, the impugned order dated 15.7.1980 passed by the authority challenged in the writ petition can not be abated nor the writ petition, as observed by the learned Judge in his order dated 12.5.1999.

7. Learned Single Judge (K.R.Vyas,J.) had initially issued Rule on Review Application being Misc. Civil Application No.1503 of 1999 and 29 other Review Applications filed in other writ petitions and then dismissed all the 30 Review Applications by his common Judgment and order dated 10.9.1999, running into 8 typed pages, which we would like to reproduced, which is as under :

CORAM : MR.JUSTICE K.R.VYAS
Date of decision : 10.09.1999
ORAL JUDGMENT

This Court on the repeal of Urban Land (Ceiling & Regulation) Act, 1976 disposed of many matters by passing the following order :

"The petitioner in this petition has challenged the order passed by the authorities under the Urban Land (Ceiling & Regulation) Act, 1976. The authorities have not taken the possession of the land in question from the petitioner, which is not in dispute.

In view of the fact that the dispute involved in this petition is directly covered under the provisions of the Urban Land (Ceiling & Regulation) Repeal Act, 1999 (Act No.15 of 1999) repealing the Urban Land (Ceiling & Regulation) Act, 1976 which is also adopted by the State Government by passing a resolution dated 30.3.1999 this petition has abated and consequently the impugned order passed against the petitioner also stands abated. Rule made

absolute accordingly with no order as to costs."

The State Government has filed the present application for review of the above order by alleging that the possession of the excess vacant land was taken over by the State before notice in the main Special Civil Application was issued. It is therefore the State wants this Court to delete this part of the order "the authorities have not taken possession of the land in question- from the petitioner, which is not in dispute." It is the contention of the State that the factual proposition to the effect that the possession of the excess vacant land was taken by the Government was not brought to the notice of the Court through inadvertence and mistake. Neither the Officers of the concerned department were called nor the original record was perused. That the petitioner has suppressed the fact that the possession was taken over by the Government before the petitioner filed the petition in this Court. In support of the say a copy of the panchnama taking possession of the excess vacant land is filed. Since the averments made in this application are common in all the matters, all these matters are heard together and are disposed of by this common order.

Mr.D.N.Patel learned AGP appearing for the applicant submitted that in these group of matters, the State Government has in fact, taken possession of the excess vacant land and this fact was within the knowledge of the petitioners and the same was suppressed by the petitioners, and, therefore, the case requires review of the order by deleting the observations that "the authorities have not taken the possession of the land in question from the petitioner which is not in dispute." In the submission of Mr.Patel, this is a clear case of mistake or the error apparent on the face of the record which clearly attract the provisions of Order 47, Rule 1 of the Code of Civil Procedure. On the other hand, learned Counsels appearing for the opponents in their respective applications, while disputing the fact that the authorities have taken over the possession of the land in question from the petitioners submitted that none of the ingredients of Order 47, Rule 1 of the Code of Civil Procedure is satisfied and, therefore, the application itself is misconceived. Learned

Counsels appearing for the opponents also raised a contention regarding the limitation by submitting that the application for review being time barred and in absence of the prayer of condonation of delay, the same is also required to be rejected on that ground.

In view of the submissions advance before me, the important question is required to be decided is about the maintainability of the review application. This Court in exercise of powers under Article 226 of the Constitution of India is having inherent powers to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But as held by the Supreme Court in the case of A.T.Sharma v/s. A.P.Sharma, AIR 1979 P.1047 there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the fact of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that, the decision was erroneous on merits. That would be the province of a Court of appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court. It is not in dispute that in the main petition even though it is averred by the concerned petitioner that he is in possession of the land in question has not been refuted with filing of Affidavit. This Court, on the basis of the averments have protected the petitioner by passing interim orders, which continued for many years. No attempts were made to vacate the said order. Thus, the fact that the petitioner was in possession or not of the land in question was within the knowledge of the State Government. It is to be noted that the authorities were having not only the sufficient time, but were also having the entire record. It is not the case of the authority that they were prevented from producing the documents to controvert the averments made in the petition. It is not pleaded by the petitioner that the Court has

committed mistake or error apparent on the face of the record and, therefore, order requires review. As observed by the Supreme Court in the case of AT Sharma (Supra) the power of review can be exercised where there is mistake or error apparent on the face of the record or any analogous ground. Having gone through the averments made in this Application carefully, I am of the opinion that the averments are too general and vague in nature. Nothing is mentioned as to who committed mistake of making a statement in the court regarding the question of possession of the land in question. As stated above, this is a clear case stained with negligence on the part of the authority by not filing proper replying the main petition dealing with the averments and more particularly on the question of possession of the land raised in the petition. The panchnama which is produced for the first time in the present application was very much there with the authority and they could have filed the panchnama along with the affidavit and disputed the question of possession. Having not done so, the dispute regarding possession having been taken for the first time cannot be agitated in the review application. In any case, the question of possession being highly disputed question of fact cannot be allowed to be raised in review application.

This Court in the case of State of Gujarat & Anr. vs. Dr.B.J.Bhatt, reported in 18 GLR p. 173, has clearly ruled that it is not open to a person who applies for review to say that merely because he has found some additional evidence to support the case which he earlier pleaded, the judgment or order against which he complained should be reviewed. It appears that this is not only a case of no diligence having been exercised, much less due diligence, but this is a case of complete negligence and indifference,"this Court, therefore, has held that the petition is not maintainable under Rule 1 of Order 47 of the Code of Civil Procedure. The present case being more or less same, in my view, the ratio laid down would clearly apply to the present case, also. In view of this, I hold that none of the application is maintainable.

Before parting, I may observe that in the application certain irresponsible and baseless

averments are made, without verifying true facts. since it concerns institute, I think it is high time that Court must observe something with a view to prevent publicity of distorted version. It is averred in Para-5B of the application that the "possession of the excess vacant land was taken by the Government on 27.7.1980 was not brought to the notice of this court through inadvertence and mistake. Neither the officer of the concerned department was called nor the original record was perused." By making this averments, the deponent wants to convey that everybody may be advocate, may be Court without paying attention to the question of possession, disposed off the matter. Originally, it appears the petition was to be affirmed by one Mr.Hamendra J.Shah, joint secretary, Revenue Department, as his name is mentioned at the end of the petition below the word Affidavit, however, instead of the said Gentleman, one Mr.M.D.Raval, Deputy Secretary of the same department ultimately sweared the affidavit, wherein he has stated that what is stated in Para 1 to 4 is true and correct to the best of his knowledge, belief and information, derived from the official records and he believed to be true and correct. Admittedly, the aforesaid averments made in Para-5(B) is not part of his affidavit. In other words, the said Gentleman is not aware about the proceedings conducted in this Court when the main petition along with other petitions were heard on the day in question. It is not his say that he is the officer who remained present and witnessed the proceedings. Thus, irresponsible averments are made by the said Gentleman. When he states that neither officer of the concerned department was called nor the original record was perused, the same being not only vague and general in nature, but factually also not correct. All the petitions were heard and disposed off in 6 to 7 days. Separate board was prepared well in advance with a view to see that both the side advocates instructions. No matter where the question of possession was in dispute was heard and was adjourned. The concerned Ld.AGP, who were assisted by their own staff as well as the concerned Government Officers, who were specially called were only required to see the factual aspect regarding possession of the land from the records. After verifying the records, necessary instructions

were in fact, passed on to the concerned AGP. The ld. AGP in fact, perused the record in presence of the court and ultimately made a statement. Thus, solely relying on the statements, this Court specifically mentioned in the order that the question of possession is not in dispute. The deponent Mr.Raval could have verified the correctness of the statement made in para 5(b) of the application before approaching the Press. With a hope that in future either Mr.Raval or any other officer shall act diligently and shall take utmost care and caution before making any statement in the Court, instead of taking any action for making incorrect statement, while deprecating the same, I close the chapter.

In the result, all these Review Applications fail and are rejected. Rule discharged in all the applications with costs. Order of status-quo stands vacated.

Sd/-
(K.R.Vyas,J.)
(Emphasis supplied)

8. Aggrieved by an order dated 12.5.1999, passed by the learned Single Judge in Special Civil Application No.539 of 1993 and common judgment and order dated 10.9.1999, passed in Review Applications i.e. Miscellaneous Civil Application No.1503 of 1999 and allied matters, the appellants have filed LPA No.978 of 2001 and other allied Letters Patent Appeals.

9. From the aforesaid common judgment and order dated 10.9.1999, passed by the learned Single Judge, in MCA No.1503 of 1999 and other allied Applications, it appears to us that after disposal of the writ petition and before filing the Review Applications, the Dy.Secretary Shri Raval seems to have approached the Press and questioned the orders passed by the learned Single Judge disposing of the writ petitions as having been abated and consequently the orders passed by the Tribunal also having been abated in view of the Repeal Act of 1999. This seems to have annoyed the learned Single Judge which is clear from the operative part of his order wherein the learned Single Judge stated that in future either Mr.Raval or any other officer shall not act in irresponsible manner and act diligently and take utmost care and caution before making any statement and

by deprecating such a practice the chapter was treated to be closed by the learned Single Judge.

10. We have already reproduced hereinabove the orders passed by the learned Single Judge in the main writ petition and common judgment and order passed in review Applications. From the order passed in main writ petitions it appears that the learned Single Judge has miserably failed to take trouble of going through the orders passed by the Authorities below, more particularly the impugned orders passed by the learned Tribunal clearly holding that the possession of the Suit land was already taken over by the State Government way back in 1990 and the said excess vacant land already vested in the State Government free from all encumbrances. In other words the State Government had become the owner in respect of the said land.

If the learned single Judge had taken little trouble of going through the impugned orders passed by the Tribunal challenged before him in the writ petition and perused the averments made in the writ petitions, wherein it is specifically stated by the petitioners themselves that the possession of the land already taken over by the State Government, then he would not have passed such orders on 12.5.1999 that the petitions having been abated and consequently the impugned orders passed against the petitioners also having been abated in view of the Repeal Act of 1999, coming into force on 30.3.1999. The learned Judge has also not mentioned in his order dated 12.5.1999 passed in the main writ petition that who made the statement before him that the Authorities had not taken possession of the land in question from the petitioner and who had not disputed the same. We are also of the considered opinion that whosoever were the learned Advocates appeared for the petitioners before the learned Single Judge in the writ petition, it was their duty to properly appraise the learned Single Judge, at least, on factual aspect. They were Court officers, but it seems that there was failure on both the sides who appeared before the learned Single Judge. Some times an Advocate for the petitioners, may be tempted to obtain favourable orders from the Judge by making false or incorrect statement, but more responsibility was on the AGPs, who were representing the case of the State Government. We would have ordered inquiry to be initiated against such erring AGPs, but as stated at the Bar by the learned Advocate General Shri Shelat for the State Government, that after issuing notices to the erring AGPs, some of them have been sacked as AGPs, therefore, we have refrained ourselves from

passing any further orders in the matter.

11. We have also carefully gone through the common Judgment and order passed by the learned Single Judge in Review Applications and having carefully gone through the same we are of the considered opinion that none of the reasons assigned by the learned Single Judge, dismissing all the Review Applications, are sustainable. This was a clear case of error apparent on the face of the record and when it was brought to the notice of the learned Single Judge then, in our considered opinion, without any hesitation, he should have reviewed and recalled his orders passed in the main writ petitions and restore all the writ petitions to the file and decided the same afresh strictly in accordance with law on merits, as there was a total failure of justice while disposing of the writ petitions.

We are also of the considered opinion that the learned Single Judge committed grave error in dismissing all the writ petitions as having been abated in view of the Repeal Act of 1999 coming into force with effect from 30.3.1999 on the ground that the Authority had not taken possession of the land in question from the petitioners, which was not in dispute. At least from the Judgment and order of the learned Tribunal it appears that the possession of the land in question was already taken over from the petitioners long back before the Repeal Act 1999 coming into force on 30.3.1999. Therefore, in our considered opinion, the learned Single Judge has committed grave error in dismissing all the writ petitions as having been abated and consequently the impugned orders passed by the Authority below also having been abated.

12 Learned Advocate General Shri Shelat has cited following Judgments in support of his arguments :

i. STATE OF GUJARAT v/s. RAVJIBHAI CHHOTABHAI PATEL, reported in 2002 (2) GLH 679;

ii. DILAVARSINH KHODUBHA v/s. STATE OF GUJARAT, reported in 1995 (1) GLR 110;

iii. BALWANT NARAYAN BHAGDE v/s. M.D.BHAGWAT, reported in AIR 1975 SC 1767;

iv. M/S. LOKMAT NEWSPAPERS PVT.LTD. v/s. SHANKARPRASAD, reported in AIR 1999 SC 2423;

v. TAMILNADU HOUSING BOARD v/s. A.VISWAM reported in (1996) 8 SCC 259;

vi. M/S. LARSEN & TUBRO LTD. v/s. STATE OF GUJARAT & ORS., reported in AIR 1998 SC 1608;

vii. VIPINCHANDRA VADILAL BAVISHI v/s. STATE OF GUJARAT, reported in 2002 (3) GLR 2592;

viii. KANHAIYALAL AGRAWAL & ORS. v/s. FACTORY MANAGER, reported in AIR 2001 SC 3645;

ix. RAM PAL v/s. STATE OF UP, reported in 2003 (3) GLH 426;

x. MOHANBHAI RAMJIBHAI v/s. DY.EXECUTIVE ENGINEER, reported in 1998 (2) GLH 44;

xi. UMAJI KESHAO MESHRAM v/s. SMT. RADHIKABAI reported in AIR 1986 SC 1272;

Shri Vakil has cited following judgments :

i. UMAJI KESHAO MESHRAM & ORS. V/S. SMT.RADHIKABAI, reported in AIR 1986 SC 1272;

ii. M/S. LOKMAT NEWSPAPERS PVT.LTD. v/s. SHANKARPRASAD, reported in AIR 1999 SC 2423;

iii. M/S. SUKHWINDER PAL BIPAN KUMAR v/s. STATE OF PUNJAB, reported in AIR 1982 SC 65;

iv. A.K.K. NAMBIAR v/s. UNION OF INDIA & ANR., reported in AIR 1970 SC 652;

v. VIRENDRA KUMAR SAKLECHA v/s. JAGJIVAN & ORS., reported in AIR 1974 SC 1957;

vi. VIRDHACHALAM PILLAI v/s. CHALDEAN SYRIAN BANK LTD. reported in AIR 1964 SC 1425;

vii. ARIBAM TULESHWAR SHARMA v/s. ARIBAM PISHAK SHARMA, reported in AIR 1979 SC 1047;

viii. SMT. MEERA BHANJA v/s. SMT. NIRMALA KUMARI CHOUDHURY, reported in AIR 1995 SC 455;

ix. ARJAN SINGH v/s. KARTAR SINGH, reported in AIR (38) 1951 SC 193;

x. STATE OF U.P. v/s. MANBODHAN LAL SRIVASTAVA, reported in AIR 1957 SC 912;

xi. THE MUNICIPAL CORPORATION OF GREATER BOMBAY v/s. LALA PANCHAM, reported in AIR 1965 SC 1008;

xii. SUNDER LAL AND SON, v/s. BHARAT HANDICRAFTS PRIVATE LTD., reported in AIR 1965 SC 406;

xiii. PARSOTIM THAKUR v/s. LAL MOHAR THAKUR, reported in AIR 1931 PC 143;

xiv. M.K.RANGANATHAN v/s. GOVT. OF MADRAS, reported in AIR 1955 MADRAS 331;

xv. ATORJAN BIBI v/s. SIKANDAR ALI CHAUDHURI, reported in AIR 1960 ASSAM 183;

xvi. PADMAVATHI v/s. KALU, reported in AIR 1980 KERALA 173;

xvii. CHHITU v/s. MATHURALAL & ORS., reported in AIR 1981 MP 13;

xviii. MAHADEO BHIMASHANKAR MADHAVE v/s. FATUMIYA HUSSEINBHAI & ORS., reported in AIR (35) 1948 BOMBAY 337;

xix. PUSULURI PUCHAMMA v/s. SHANKARAMANCHI RAMASITAMMA & ANR., reported in AIR 1954 MADRAS 191;

xx. TALUKA DEVELOPMENT OFFICER v/s. SADAJI KUVARJI THAKORE, reported in 2004 (1) GLR 502;

xxi. MANSUKHLAL KAPURCHAND SANGHVI v/s. SHUSHILABEN DURLABHJI VIRANI, reported in 1973 GLR 422;

xxii. ATAM SUGNOMAL POHANI v/s. GUJARAT ELECTRICITY BOARD, reported in 1986 (2) GLR 1161;

xxiii. TAKHAJI HIRAJI v/s. THAKORE KUBERSING CHAMANSING reported in 2002 (1) GLR 1 (SC);

xxiv. STATE OF GUJARAT V/s. Dr.B.J.BHATT, reported in 1977 GLR 173;

xxv. VITHALBHAI LALLUBHAI PATEL v/s. THE ADDITIONAL SPECIAL LAND ACQUISITION OFFICER, reported in 1967 (8) GLR 37;

xxvi. PATEL NANJI BHOVAN DUDHATRA v/s. PATEL NARAN MITHA SUKHADIYA, reported in 1998 (1) GLR 788;

13. We were really shocked and surprised that inspite of the above glaring facts almost all the respondents original petitioners raised preliminary objections regarding maintainability of LPAs. When such a plea of maintainability of all these Appeals was raised by the respondents - original petitioners, who have scant regard to the judicial process of law and who have abused the process of law, then it is required to be answered. It may be stated that on this point of maintainability of Appeals aforesaid Judgments of the Hon'ble Supreme Court and of this Court were cited before us by the learned Advocate General Shri Shelat and learned Senior Advocate Shri Vakil for several days. But, none was applicable, on peculiar facts of this case, which we have already narrated hereinabove.

14. Referring and discussing number of Judgments cited by the learned Counsel for the respondents on the point of maintainability of all these Appeals would be meaningless as none has any bearing on the peculiar facts of these cases, therefore, we have refrained ourselves from reproducing and discussing the same in our Judgment. On the point of maintainability learned Advocate General has also cited several judgments, which are stated hereinabove. We would not like to either reproduce the same or deal with the same in this Judgment as, in our considered opinion, the later Judgment of the Division Bench of this Court in the case of I.N.Patel v/s. K.H.Trivedi, reported in 2003 (3) GLR 1878, dealing with all the Judgments of the Supreme Court as well as this Court clinches the issue. In Para : 12 of the I.N. Patel (Supra) the Division Bench has laid down certain principles which are reproduced as under :

"12. Accordingly, the following principles would have to be applied while considering the question about maintainability of a Letters Patent Appeal against the judgment of a single Judge, in a petition under Art.226 and/or Art. 227 of the Constitution :-

(i) Whether the petitioner has invoked jurisdiction of this Court under Art.226 or Ar.227, if the learned Single Judge has exercised jurisdiction under Art.226, Letters Patent Appeal would be maintainable.

(ii) If the Judgment rendered by the learned Single Judge is in exercise of jurisdiction under

Art.227 of the Constitution, Letters Patent Appeal would not be maintainable.

(iii) If the single Judge has not stated whether he has exercised his jurisdiction under Arts.226 or 227 of the Constitution, it would be relevant to examine whether the proceeding in question is an original proceeding or the proceeding challenges the decision of a Tribunal. If the proceeding is original, the petition would obviously be under Art.226.

If the petition challenges the decision of a Tribunal, further inquiry should ensue. The expression "Tribunal" would include within its ambit adjudicating bodies, provided they are constituted by the State and are invested with judicial, as distinguished from purely administrative or executive functions. The principal test of determining the character of the authority as Tribunal is whether that authority is empowered to exercise any adjudicating power of the State and whether the same has been conferred on it by any statute or a statutory rule.

If the Tribunal or the Court has exercised judicial function of the State as explained in the decision of the Apex Court in State of Maharashtra v/s. Labour Law Practitioners' Association, 1998 (2) GLR 1079 (SC) : AIR 1998 SC 1233 and the Tribunal or the Court is subordinate to the High Court within the meaning of Art.235 of the Constitution, then a presumption will be raised that the single Judge has exercised his jurisdiction under Art.227 of the Constitution.

(iv) If the Single Judge has not stated under which provision he has decided the matter and where the facts justify filing of petition both under Art.226 and Art.227 and the Court has decided the petition on merits, the Letters Patent Bench would consider whether substantial part of the order sought to be appealed against is under Art.226 or not. If it is found that the substantial part of the order sought to be appealed against is under Art.226, Letters Patent Appeal would be maintainable, but not otherwise.

(v) If substantial part of the order sought to be

appealed against is under Art.226, Letters Patent Appeal would not become non-maintainable merely because in the final order the single Judge has given ancillary directions which may pertain to Art.227."

15. From the peculiar facts of all the cases it is clear that Letters Patent Appeals were very much maintainable before this Court. It may be stated that some of the writ petitions were in fact filed only under Article 226 of the Constitution and some of the writ petitions were filed under both, Article 226 and/or Art.227 of the Constitution. By merely labelling the petition under Article 227, it would not become petition under Article 227 of the Constitution. Some of the Advocates had rightly filed their petitions before the learned Single Judge under Article 226 of the Constitution, therefore, they frankly conceded that Appeals filed in their case were maintainable. While deciding the question regarding maintainability of the Appeals can we segregate the cases of those who have labelled the petitions as petition under Article 227 or under Art.226 and Art.227 of the Constitution? Answer is obviously "No".

16. We have already reproduced hereinabove common judgment and order dated 10.9.1999, passed by K.R.Vyas,J. in Misc. Civil Application No.1503 of 1999 and allied Applications. From the said order also it is clear that the learned Single Judge had exercised his powers under Art.226 of the Constitution while deciding the writ petitions. This should be more than sufficient to hold that all the Letters Patent Appeals were maintainable.

17. In the end we must state that the point in question regarding the maintainability of all these Letters Patent Appeal has already been decided once by another Division Bench of this Court (M.R.Calla, J. (as he then was) and Ravi R. Tripathi, J.) on 31.8.2001, in Civil Application No.7393 of 2000 (for condonation of delay) in LPA(st) No.93 of 2000 and allied matters in favour of the Appellants. By the said Judgment the Division Bench has also expressed its opinion on the question of possession of land vesting with the State Government in view of the Judgment of the Hon'ble Supreme Court in the case of M/s. Larsen & Tubro Ltd. v/s. State of Gujarat, reported in AIR 1998 SC 1608. The said decision was not challenged before the Apex Court. Hence, it has become final and we are bound by it.

18. Lastly, it may be stated that after condonation

of delay when the main LPA No.978 of 2001 was placed before the Division Bench of this Court (R.K.Abichandani & Jayant Patel, JJ.) on 21.12.2001, at that time also, on behalf of the respondent - petitioner Shankalchand P. Vachheta, his learned Counsel raised preliminary objections on the ground that no LPA would lie against the order of rejecting the review Application which was found to be without substance. It is true that Their Lordships used the word "prima facie" in their order dated 21.12.2001. However, as stated earlier, we are of the confirmed opinion that on peculiar facts and circumstances of the case of all these cases LPAs are maintainable.

19. Having held that LPAs are maintainable we were required to decide the matters on merit, but all the learned Counsel for the parties, except Mr.Vakil, including learned Advocate General Shri Shelat, submitted that by simply setting aside the orders passed by the learned Single Judge in main writ petitions and the common Judgment and order dated 10.9.1999 in Review Applications, all the writ petitions be sent back to another learned Single Judge for his decision on merits. Therefore, without expressing any opinion on merits of the case all these Appeals are allowed and the impugned common Judgment and order dated 10.9.1999 passed in Misc. Civil Application No.1503 of 1999 and the allied matters and the orders passed by the learned Single Judge disposing of all the writ petitions are hereby quashed and set aside and the office is directed to place all the main writ petitions for final disposal before the learned Single Judge taking up such matters as per present Roster. It goes without saying that the learned Single Judge will decide all the writ petitions, in accordance with law after extending an opportunity of hearing to both the parties.

20. Accordingly, all these Appeals are allowed with costs which is quantified at Rs.10,000/- which shall be paid by all the respondents - original petitioners per each LPA to the Appellant - State of Gujarat, within one month from today.

21. For the aforesaid reasons LPA Nos.600/03 & 108/01 are also allowed accordingly with costs of Rs.10,000/which shall be paid by the respondents original petitioners to the Appellant State of Gujarat, within one month from today and, thereafter, main writ petitions be placed before the learned Single Judge taking up such matters as per present Roster.

Civil Applications for stay, filed in above Letters Patent Appeals are also disposed of as the main Letters Patent Appeals are allowed. During the final disposal of the writ petition the State Government may draw the Panchnamas about the position of all the lands in question prevailing at present. The parties to maintain status-quo regarding lands in question till the final disposal of writ petitions.

sd/-
(B.J.SHETHNA, J.)

Date : July 29, 2004

sd/-
(M. C. PATEL, J.)

sas

When we pronounced this Judgment in the Open Court at 11.00 a.m. today i.e. on July 29, 2004, learned Senior Advocate Shri S.B.Vakil, appearing for the respondents in LPA No.1000 of 2001, submitted that his matter was required to be heard on merits also. His Appeal was clubbed together with all other Appeals and when all other learned Counsel, appearing for the respondents, had requested to send back their matters to the learned Single Judge for deciding the same on merits, if this Court comes to the conclusion that the Appeals were maintainable then, we were of the considered opinion that it is desirable that all the matters, including the LPA No.1000 of 2001, in which Shri Vakil was appearing for the respondents, be decided on merit by the learned Single Judge though Shri Vakil seriously objected about it.

Shri Vakil further submitted that he was not agreeable for remand of the matter to the learned Single Judge on any concession made by other Counsel and he wanted that his LPA to be heard on merit to consider whether the remand would be justified or not. His further submission that even if the LPA was maintainable then also on the point of merit it was required to be dismissed and that the Court said that his Appeal may also be separated from the group of matter, instead Court decided and remanded his matter also to the ld.Single Judge.

It is true that this Court initially was of the tentative opinion that his Appeal may be separately decided on merit, but considering over all circumstances of the matter we thought it fit not to separately decide his LPA No.1000 of 2001 on merit because it would unnecessary put the learned Single Judge in an embarrassing position. Therefore, we refrained ourselves from deciding LPA No.1000/01 on merits, when the ld.Single Judge had decided all the writ petitions as

having abated and not decided the matters on merits and it is better if ld.Single Judge decides all matters including matters of Mr.Vakil on merits.

sd/-
(B.J.Shethna, J.)

Date : July 29, 2004 sd/-
(M. C. Patel, J.)

sas